IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.2294 of 2007

Date of Decision: 30.04.2007

Darshan Singh & Ors. ..Petitioners

Vs.

Harminder Singh & Ors. ..Respondents

**Coram: Hon'ble Mr. Justice Vinod K.Sharma**

Present: Mr.R.K.Battas, Advocate,
for the petitioners.
Mr.O.P.Nagpal, Advocate,
for Caveator-respondents No.1 and 3.

**Vinod K.Sharma,J. (Oral)**

This order shall dispose of two civil revision petitions bearing Nos. 2294 and 2295 of 2007, both titled Darshan Singh & Ors. Vs. Harminder Singh & Ors.

For facility, facts are being taken from CR No.2294 of 2007.

Present revision petition has been filed against the order passed by the learned Additional Civil Judge (Junior Division), Patiala vide which application moved by the respondent-plaintiffs for rejecting the application moved by the petitioners for examining additional witnesses has been allowed.

The learned trial court has held that it is not open to the

petitioners to lead evidence in rebuttal to the rebuttal evidence led by the plaintiff on issue No.4 regarding the Will.

The learned trial court has observed that the case has been remanded by the learned Additional District Judge, Patiala in view of the fact that no finding was recorded on the Will merely because mutation had not been challenged. This approach of the learned trial court was held to be erroneous and consequently, the case was remanded back. The defendants have already led evidence to prove the Will by producing marginal witnesses and scribe of the Will, whereas the plaintiffs claimed that the Will did not bear signatures of the executant. It was further held that as per remand order the court was bound to discuss the said evidence and decide the issue accordingly.

The learned lower appellate court had also set aside the finding on issue No.2 in which it was held that the property was not Joint Hindu Family coparcenary property and directions were issued to decide the said issue afresh after calling the Kanungo, Puran Chand along with record. In pursuance to the remand order the plaintiff examined Puran Chand, Kanungo and plaintiffs also stepped in the witness box and thereafter the evidence was closed. Thereafter, defendant-petitioners were given an opportunity to lead evidence. However, an objection was raised that it was not open to the defendant-petitioners now to prove the Will as the evidence has already been led on this point by both the parties. The learned trial court while disposing of the application filed by the plaintiff-respondents permitted the petitioners to lead evidence to rebut the evidence now led by the plaintiffs and the defendant-petitioners have been restrained from

leading any other additional evidence.

Learned counsel appearing on behalf of the petitioners vehemently contended that as the plaintiff-respondents had failed to prove that the property was ancestral in nature and subsequently in view of the remand once evidence has been led to prove ancestral nature of the land the petitioners should also be given an opportunity to prove the Will so as to prove that inheritance of the property was not on the basis of the Will and therefore, could not be said to be ancestral property.

This contention of the learned counsel for the petitioners is misconceived as evidence on Will has already been led. The Will is already exhibited and whatever the consequences of the said evidence would be tested by the learned trial court while deciding the issue. The petitioners have already been given an opportunity to rebut the evidence now led by the plaintiff-respondents in pursuance to the remand order. The learned trial court was, therefore, right in accepting the application as the petitioners were trying to reopen the whole case, which was not open to the petitioners in view of the remand order passed by the learned Additional District Judge.

There is no error in exercise of jurisdiction by the learned trial court which may call for interference by this court in exercise of revisional jurisdiction.

Dismissed.

**April 30,2007** **(Vinod K.Sharma)**
rp **Judge**

Present: Mr.R.K.Battas, Advocate,
for the petitioners.
Mr.O.P.Nagpal, Advocate,
for Caveator-respondents No.1 and 3.

Dismissed.

For detailed orders see CR No. 2294 of 2007, titled Darshan Singh & Ors. Vs. Harminder Singh & Ors.

**April 30,2007** **(Vinod K.Sharma)**
rp **Judge**